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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Timothy BATEMAN et al.

Serial No. 09/940,419

Art Unit: 3743

Filed: August 29, 2001

Examiner: Mitchell, Teena Kay

For: PATIENT VENTILATION
DEVICES

Atty Docket: 0100/0134

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNAVOIDABLY UNDER 37 C.F.R. § 1.137(a);
or, in the alternative,
ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. § 1.137(b)**

MAIL STOP PETITIONS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

1. Applicant petitions for the revival of the above-identified application.
2. The instant application became abandoned on July 26, 2005, subsequent to the six month statutory period to respond to the office action dated January 26, 2005. An office communication from the PTO dated September 21, 2005 notes that the above-identified application became abandoned due to applicant's failure to timely file a proper reply to the office action of January 26, 2005, as no reply has been received.
3. A Rule 116 amendment, copy attached herewith, in fact was filed on April 11, 2005 in response to the January 26, 2005 Office Action. The responsive amendment was filed by fax to the official fax server number of the U.S. PTO for receiving responsive amendments. A copy of the "Auto-Reply Facsimile Transmission" evidencing that the U.S.

PTO had received the responsive amendment on April 11, 2005 is attached herewith as Appendix A.

4. The amendment was filed subsequent to a telephone conference with the examiner on April 6, 2005 in which the examiner suggested certain amendment to independent claims 1 and 10 that would place the case in condition for allowance. In the amendment filed on April 11, 2005, the examiner's suggested amendments were effected to independent claims 1 and 10.

5. With the filing of the amendment, the undersigned believed that the case would have been allowed, and therefore was awaiting the Notice of Allowance, until informed by way of a telephone call from the examiner sometime at the end of August that no response had yet been received by her.

6. From the time that the undersigned had the conversation with the examiner until the voicemail by the examiner to the undersigned on or about September 18, 2005, the undersigned had await confirmation from the examiner on whether she will send out a notice of abandonment.

7. This Petition is filed subsequent to the receipt of the formal office communication from the examiner dated September 21, 2005 notifying the undersigned that the case has been abandoned.

8. In addition to attaching the responsive amendment previously filed on April 11, 2005, in light of the abandonment of this application, if required, a RCE accompanies this petition to revive the instant application.

9. In light of the apparent belief by the undersigned that the case has been allowed, since the undersigned had no reason to believe that the required responsive amendment was not received by the U.S. PTO, it is respectfully submitted that the entire delay in the

filing of the required reply from the due date of the reply until the filing of this petition was unavoidable under 37 C.F.R. § 1.137(a)(3).

10. Alternatively, if the Commissioner determines that the instant application was abandoned not due to unavoidable circumstances, it is respectfully submitted that the failure to prosecution was an unintentional delay, the entire delay in filing the required reply from the due date until the filing of this petition being unintentional under 37 C.F.R. § 1.137(b)(3).

11. The application is on behalf of a large business entity. The Commissioner is therefore respectfully requested to debit a fee of \$500.00, in the event that he decides to grant the revival under 37 C.F.R. § 1.137(a), or a fee of \$1,500.00 if the revival of the instant application is to be granted under 37 C.F.R. § 1.137(b), from Deposit Account No. 50-0501. If additional fees are required, the Commissioner is authorized to debit those required fees from the same account. Any overcharges are requested to be credited to the same account.

12. In view of the abandonment of this case, the undersigned has undertaken an updating of the docket system of the firm whereby a reminder to check the status of the case with the U.S. PTO is provided before the end of the statutory response period of the case even when it is apparent that the case will be allowed upon submission of a Rule 116 response to a final rejection office action.

Respectfully submitted,



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Date: Sept 28, 2005